

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Applicant,)	
)	No. 4:06-MC-546 CAS
v.)	
)	
MICHAEL F. SHANAHAN, SR., et al.,)	
)	
Respondents.)	

ORDER

This matter is before the Court on the respondents’ Joint Motion for Stay Pending Appeal and Incorporated Memorandum in Support, filed on March 22, 2007. The motion states that respondents are appealing from the Memorandum and Order issued by this Court on March 14, 2007, which granted the Securities and Exchange Commission’s application for an order requiring compliance with subpoenas *duces tecum*, and that notices of appeal were timely filed with the United States Court of Appeals for the Eighth Circuit. The respondents state that because the Memorandum and Order requires them to produce responsive documents or assert a valid and applicable privilege by March 28, 2007, and travel to Chicago, Illinois to be deposed by the SEC’s employees on April 11, 2007, a prompt ruling on the instant motion is vital.

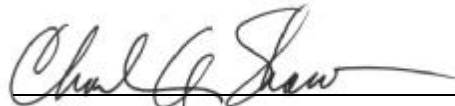
The respondents assert that failure to grant a stay will in effect moot the appeal, as they will be forced to comply with the SEC’s subpoenas before the Court of Appeals has had the opportunity to review the Memorandum and Order. The respondents state that their appeal “concerns an effort by the SEC to force Movants to testify before it while a parallel criminal investigation is pending in the Eastern District of Missouri, so that Movants are compelled to assert their Fifth Amendment right

not to be witnesses against themselves. The SEC has stated that it intends to use adverse inferences from this testimony in civil proceedings against the Movants.” Joint Motion at 3, ¶ 7. The respondents contend that “no actual prejudice will result from the granting of a stay in this case, although the SEC’s effort to leverage the pending criminal investigation into adverse inferences for its civil action will be at least temporarily delayed.” Id.

The respondents acknowledge that the Court has discretion to grant a stay of the Memorandum and Order under Rule 62(c), Federal Rules of Civil Procedure. In the exercise of that discretion, the Court declines to stay the Memorandum and Order pending appeal, but issues this order promptly so that respondents may seek a stay of the Memorandum and Order from the Eighth Circuit Court of Appeals. Cf. United States v. Olson, 604 F.2d 29, 31 n.2 (8th Cir. 1979).

Accordingly,

IT IS HEREBY ORDERED that the respondents’ Joint Motion for Stay Pending Appeal is **DENIED**. [Doc. 28]


CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of March, 2007.